



# H2

U.S. Department of Justice

Immigration and Naturalization Service

identify  
prevent identity  
invasion of personal privacy:

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

FILE:

Office: Miami

Date: 11 APR 2002

IN RE: Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under  
Section 212(h) of the Immigration and Nationality Act, 8 U.S.C.  
1182(h)

IN BEHALF OF APPLICANT:

Public Copy

#### INSTRUCTIONS:

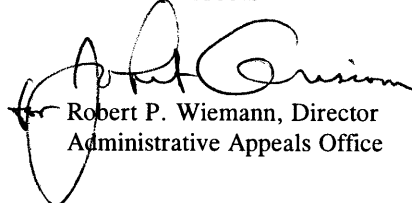
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Miami Florida, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Nicaragua who was present in the United States without a lawful admission or parole on April 11, 1989. On April 13, 1989, he was served with an Order to Show Cause. On June 19, 1989, an immigration judge denied the applicant's applications for asylum and withholding of deportation and granted him until August 1, 1989, to depart voluntarily in lieu of deportation. The applicant failed to depart by that date, and a Warrant of Deportation was issued against him on August 22, 1989. Therefore he is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(ii).

On June 28, 1989, the applicant was released on his own recognizance to report in person at the local Service office every third month. The present record contains a memorandum dated March 10, 1993, which reflects that the applicant, as a national of Nicaragua who was under an outstanding order of deportation, was under a policy of review before authorization to proceed to removal could be granted. He subsequently received employment authorization.

The applicant was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant married a lawful permanent resident on November 30, 1991, and seeks adjustment of status under the Nicaraguan Adjustment and Central American Relief Act, Public Law 105-100 (NACARA). The applicant now seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. 1182(h), to remain with his spouse and two children in the United States.

The district director noted that the applicant's name does not appear on either of the two children's birth certificates. The record is devoid of any response to that observation.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying relatives and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On appeal, counsel disagrees with the prior decisions. Counsel discusses the terrible effects of the applicant taking the two children to Nicaragua, the second poorest country in the Western Hemisphere. Counsel states that the applicant's children would have to return to Nicaragua with him because he is the primary financial provider for the family.

There are no laws that require a United States citizen or a lawful permanent resident who is not removable to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994). In Silverman v. Rogers, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

On appeal, counsel states that the failure to consider all relevant facts bearing on extreme hardship constitutes an abuse of discretion. Counsel asserts that the applicant's mother, a lawful permanent resident, depends on his financial and emotional support. Counsel states that the Associate Commissioner is applying a much higher standard than that which is required by law.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed crimes involving moral turpitude. In addition to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009, this intent was recently seen in the provisions of the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214, which relates to criminal aliens. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See Fiallo v. Bell, 430 U.S. 787 (1977); Reno v. Flores, 507 U.S. 292 (1993); Kleindienst v. Mandel, 408 U.S. 753, 766 (1972). See also Matter of Yeung, 21 I&N Dec. 610, 612 (BIA 1997).

The record reflects the following:

- (1) On August 2, 1991, the applicant was convicted of the offense of Trespass. He was sentenced to time served.
- (2) On September 8, 1992, the applicant was convicted of the offenses of Grand Theft Auto and Possession of Burglary Tools under the name of [REDACTED]. He was sentenced to one year probation.
- (3) On December 8, 1992, the applicant was convicted of Obstructing Justice under the name of [REDACTED] Hernandez. He was sentenced to time served.
- (4) On May 28, 1993, the applicant was convicted of the offense of Grand Theft Third Degree. He was sentenced to 18 months probation.

(5) On September 18, 1998, the applicant was convicted of the offense of Disorderly Intoxication. He was sentenced to 6 months public service at a schoolhouse.

Section 212(a)(2)(A)(i) of the Act states in pertinent part, that any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime,...is inadmissible.

Section 212(h) of the Act, provides, in part, that the Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I),...or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien;...and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status. No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent

residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since 1993 when the applicant committed his last violation classifiable as a crime involving moral turpitude. Therefore, he is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968).

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship.

The court held in INS v. Jong Ha Wang, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In Matter of Mendez-Morales, 21 I&N Dec. 296 (BIA 1996), the Board concluded that the alien's departure would cause extreme hardship to his wife and children, as they were dependent on him financially and are emotionally close to him. The alien's wife in that matter testified that she and the children would likely move to Kansas to live with her adoptive father. The alien's wife indicated that she was receiving psychiatric treatment for depression, she had attempted to commit suicide and she suffered from a medical condition involving her spine and hips that precluded her from lifting things.

The applicant's wife in this matter became a lawful permanent resident in April 1996. Her Service file is not present in this matter for review in order to determine whether she has other relatives in the United States with whom she could live, whether she has some physical or mental handicap which precludes her from

being employed or which restricts her being employed as the alien's wife was in Mendez-Morales. Further, she has not provided a separate statement for review as did the applicant and his mother.

The hardships cited in the record are similar to the hardships cited in Mendez-Morales. However, the applicant's wife in this matter does not appear to have any mental or physical impediments to seeking employment or living a normal life as the alien's wife had in Mendez-Morales, which resulted in a finding of extreme hardship. Further, the record is silent as to other relatives that the applicant's wife may have in the United States who might lend emotional or financial support. The statement by the applicant's mother that she depends on the applicant for financial support is unsupported in the record. The applicant's mother has not provided any financial documentation such as income tax returns, a personal income statement, bank records, monthly bills she must attend to, etc., for review and in support of her assertions.

Therefore, it is concluded that the totality of the components cited by the applicant fail to support the existence of extreme hardship as envisioned by Congress if the applicant is not allowed to remain in the United States. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe. Since the applicant has failed to establish the existence of extreme hardship, no purpose would be served in discussing a favorable exercise of discretion at this time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the order dismissing the appeal will be affirmed.

Should this matter appear before the Associate Commissioner again, it must be supported by the Service files of Virginia Chavarria, [REDACTED] and Lisette Del Socorro Tellez, [REDACTED]

**ORDER:** The motion is denied. The order of December 13, 2001, dismissing the appeal is affirmed.